

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

June 8, 2012

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, on June 8, 2012. Members present were Chairman Louis Stout, Janice Meyer, James Griggs, Noel White and Thomas Glover (arrived at 1:38 p.m.). Members Kathy Moore and Barry Stumbo were absent. Others present were Rochelle Boland, Department of Law; and Jim Marx, Zoning Enforcement. Staff members present were Jimmy Emmons, Barbara Rackers and Wanda Howard.
- II. **APPROVAL OF MINUTES** - Prior to the revocation hearing and subsequent to the Board's approval of the change to the meeting and filing schedule, the Chairman announced that the minutes of the December 16, 2011 meeting and the January 27, 2012 meeting would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously (Moore, Stumbo, Glover absent) to approve the minutes of the meeting held on December 16, 2011.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer and carried unanimously (Moore, Stumbo, Glover absent) to approve the minutes of the meeting held on January 27, 2012.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

B. **Conditional Use Appeals**

1. **C-2010-20: INNER CITY BREAKTHROUGH MINISTRIES** - the Board of Adjustment has requested a revocation hearing for failure to comply with conditions imposed when the applicant was approved as a church in March 2010, in a Wholesale and Warehouse Business (B-4) zone, on property located at 824 Winchester Road. (Council District 5)

In March 2010, the Board approved a conditional use permit for a church at this location, subject to several conditions. The conditions imposed by the Board, which are under review, consist of the following:

1. The church shall be established in accordance with the submitted application and revised site plan dated March 25, 2010.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning the church use.
3. Sanctuary seating shall be provided for no more than 30 persons within this building.
4. The proposed landscape buffer at the northwest corner of the property shall consist of at least one small tree and shrubs, designed and installed in accordance with the recommendations of the Landscape Examiner with the Division of Building Inspection.
5. A shared parking or lease agreement for four off-street parking spaces at 911 Dayton Avenue shall be obtained, subject to review and approval by the Department of Law and the Division of Building Inspection. Said agreement shall include a survey or other documentation that the boundary of 911 Dayton Avenue includes the four parking spaces at the rear of that lot, as depicted on the revised site plan dated March 25, 2010.

Prior to the hearing, Chairman Stout commented about the procedure. He said anyone present who would be speaking, either in support or opposition, would be allowed three minutes to do so; and the comments that are made should not be repetitious. He said those persons in the audience would be given the opportunity to speak if there was something that had not already been addressed and

presented relative to this case, pro or con. The Chairman subsequently asked all the objectors to stand, as well as the supporters. There were several of each group present.

At this time, the Chairman asked all those persons present who would be speaking or offering testimony to stand and be sworn.

In response to the Chairman, Mr. Emmons stated that the staff presentation would be given by Mr. Jim Marx, with Zoning Enforcement. Mr. Emmons submitted letters to the Board that were received by the Planning staff regarding this matter, as well as correspondence received from the 5<sup>th</sup> District Council office.

Staff Presentation – Mr. Marx provided background information with respect to the revocation hearing. He said he wanted the Board to have a clear understanding about the small church facility, with 30 sanctuary seats, that was approved (as a conditional use) in March 2010. An aerial photo of the subject property, located at 824 Winchester Road, was shown on the overhead display. Mr. Marx stated that the 5,700 square-foot lot is mostly taken up by a two-story building (2,600 sq. ft. per floor) of about 5,200 square feet; and that the building pushes up closely to the street rights-of-way on both corners along Winchester Road and Dayton Avenue. He noted that when this appeal for a church was originally approved, one of the issues was the parking situation, as the photo taken prior to approval illustrated. Since only two of the required parking spaces could be provided on the property, a shared parking agreement was secured by the applicant for the use of four spaces on an adjacent lot, in order to meet the minimum parking requirement of six spaces.

Mr. Marx stated that a critical piece of this case was the zoning of the subject property. A map was shown to illustrate the zoning of the properties in the surrounding area, which included B-4 (Wholesale and Warehouse Business -- such as the subject property, which allows a church as a conditional use); R-2 (Two-Family Residential); B-1 (Neighborhood Business); B-3 (Highway Service Business); and I-1 (Light Industrial). It was noted that the distance from the subject property to the nearest residential zone is less than 80 feet on the north side of Dayton Avenue and less than 50 feet on the south side of Dayton Avenue. Mr. Marx reiterated about the Board's approval in 2010 of a small church, consisting of 30 sanctuary seats, with activities two days per week; and that the approval was subject to five conditions, which were shown on the overhead display. Regarding Condition #1, he said it was based on how the application was described; and that the submitted application stated that the church would be providing Sunday morning services at 8:00 a.m. and 11:30 a.m.; Thursday morning "Transforming the Mind" classes at 9:30 a.m. and 11:30 a.m.; Thursday evening bible study at 6:00 p.m.; and bus service for 75% of members. The point was made that these are traditional church-type activities held twice per week. As to Condition #3, he said it was a reiteration of what was included in Condition #1, in that the applicant wanted sanctuary seating for 30 persons.

Mr. Marx stated that, although approval for the conditional use was granted to Inner City Breakthrough Ministries, they vacated the property less than a year later, at which time the operation of the facility was taken over by Emmanuel Apostolic Church and the Catholic Action Center. In point, he referenced the letter received by the Division of Building Inspection, dated March 21, 2011, that described the dissolution of the relationship between the involved parties. Mr. Marx said basically, the conditional use was transferred, which the Certificate of Occupancy that was shown allows. He noted that the original approval did not have a null and void condition; and as long as the new occupant adheres to the conditions previously imposed by the Board, the transfer is allowed. However, he said it was important to look at the conditions that clearly were referenced on the Certificate of Occupancy along with the original BOA case number, which stated: "Must maintain a parking agreement per BOA; second floor to be used for offices and classes; and maximum occupant load of main auditorium is 30." Mr. Marx went on to say that in April 2011, the Community Inn was established; and that this facility has been providing overnight accommodations, for up to 75 persons on the first floor, seven days a week. He said it was clear that this was a fundamental change in use and well beyond the scope of what the Board originally approved. In his and the staff's opinion, this was clearly out of compliance with Condition #1.

Mr. Marx explained the significance of noncompliance with the imposed conditions with respect to the B-4 zoning of the subject property. He said the change in use is so substantial that it has put the use in question in a category that is not allowed in the B-4 zone, namely a residential facility; and that a

residential facility is allowed only in two very limited instances. Further, the B-4 zone does not allow a community center either as a principal permitted use or as a conditional use.

Regarding the next level of significance, Mr. Marx spoke about the intensity of the use and its impact on the surrounding neighborhood (i.e., comparing a small 30-seat sanctuary with related activities two days a week to having up to 75 people on the first floor, on an overnight basis, seven days a week). He said the staff was aware of numerous concerns that had been expressed by the surrounding neighborhood, both residents and businesses, over the past year as the Community Inn was established and operating. Data was shown of police "calls for service" at 824 Winchester Road from January through April 2012 in relation to all the churches located within a ½-mile radius. A map also was shown to illustrate the ½-mile radius extending from the subject property, as well as the churches currently located within that area (indicated in blue). Mr. Marx reviewed the data provided by the police department, noting the four church facilities within the ½-mile radius indicated. He said of the total 38 "calls for service" during the 4-month time period noted, 32 were in regard to 824 Winchester Road and included such categories as: disorderly conduct (9); criminal trespass (8); assault (4), etc. He said this information was furnished in order to show that the facility in question is different than a church, in terms of how it impacts the surrounding neighborhood; and that those impacts need to be recognized and managed. He said one of the staff's concerns was that the characteristics of this particular property do not lend themselves to managing those kinds of impacts very well (i.e., very small lot; building pushed up against the rights-of-way of Winchester Road and Dayton Avenue; residential zoning less than 100 feet away from facility, etc.); and that this is a very challenging situation.

With respect to the third level of significance, Mr. Marx spoke about the public notification process. He stated that prior to the Board's consideration of the conditional use appeal, letters were sent to the property owners within a 400-foot radius of the subject property (standard legal requirement) informing them of the applicant's desire to start a church. He said several calls were received from the neighbors expressing concern that this was going to be a homeless shelter; and that staff spoke with Pastor Morris, Inner City Breakthrough Ministries, on more than one occasion and received his assurance that this facility would not be a homeless shelter, nor would it accommodate any kind of overnight residency, which was passed on to the neighborhood. He said this neighborhood has been misled, perhaps intentionally or by the process, about what has actually happened; and they had not gotten an accurate description of the activity proposed to operate at this site, which obviously is not how the public notification process is designed to work.

Mr. Marx then spoke about the second floor expansion of the homeless shelter in mid-February 2012; and the meeting that was held in the Division of Building Inspection to discuss the expansion, for the purpose of separating the overnight accommodations for men and women at the shelter. The meeting was attended by Nancy Marinaro, Division of Building Inspection; Jim Marx, Division of Planning; representatives from the Division of Fire Services; Ginny Ramsey, Catholic Action Center; and Pastor McDonald, Emmanuel Apostolic Church. Mr. Marx said it was made very clear at this meeting that there were serious zoning impediments to having an overnight homeless shelter at this location; and that an offer was made to have Counsel Rochelle Boland meet with the attorney for the Catholic Action Center in order to further discuss the issue, which evidently was declined since no action was taken on their part. Subsequent to the meeting in February, a Certificate of Occupancy was issued, which allowed improvements to be made to the second floor of the building for health and safety purposes. Mr. Marx said there was a need, for code reasons, to make changes to the windows; and that the Certificate of Occupancy that was issued (shown on the overhead) referenced the previously imposed conditions of BOA Case # C-2010-20 that must be met and noted the use of the upstairs for offices and meeting rooms only. He said there was a very clear requirement that the upstairs could not be used for the purpose of overnight accommodations; and there was no authorization to do anything other than what the Board originally approved. Despite the discussion at the February 14 meeting, an expansion of the overnight shelter to the second floor was completed and an announcement regarding the grand opening of the facility was made in May. It was reiterated that this facility is not being operated in compliance with the Board's original approval in 2010.

Mr. Marx briefly spoke about another noncompliance issue, with respect to Condition #5. He said this condition requires that a parking agreement be maintained with the adjoining property owner at 911 Dayton Avenue, for the purpose of providing four off-street parking spaces; however, this has not been done to date. He referenced a letter (dated March 30, 2012) in the Board's packet from the

adjoining property owner stating that they were no longer giving permission to any occupant of the building other than the Inner City Breakthrough Ministries for shared parking on their premises. Therefore, the facility in question does not meet the required minimum off-street parking requirement for a church with 30 sanctuary seats and is not in compliance with the previously imposed condition.

Mr. Marx identified five options for the Board to consider in order to address the current use of the property at 824 Winchester Road:

- The Board could decide not to revoke the conditional use and find that the facility is in compliance with the original conditions. Mr. Marx cautioned the Board about the far-reaching implications of choosing this option with respect to the land use regulatory process and noted the staff's recommendation to dismiss this option.
- The Board could decide not to revoke the conditional use and find that the facility is not in compliance. Mr. Marx said this option would allow the current occupant or any future occupant to maintain a church at this location if it is in compliance with the original conditions; and it also would allow enforcement to proceed with those aspects of the use that are determined to be noncompliant (which, in this case, is the entire facility). He said, while this option does have some merit, it would be complicated from a legal perspective; and the staff recommends that this option be left open as a secondary, rather than preferred, choice.
- Amend the conditional use. Mr. Marx said an application could be made to amend the conditional use to add the component of the overnight shelter. He said the staff's main concern with this option is that the current use is such a different change that it is pushing into a category that is not permitted in the B-4 zone. He noted that if an amendment of the conditional use is sought, it would have to be accompanied by an administrative appeal alleging that the staff's interpretation of the Zoning Ordinance is incorrect and arguing that, indeed, this type of facility is allowed in the B-4 zone. Therefore, it would be a two-part appeal.

Chairman Stout asked if this would constitute a zone change. Mr. Marx replied no, but rather an interpretation issue through an administrative appeal.

Continuing, Mr. Marx reviewed the last two options that were available for the Board's consideration, as follows:

- Request a zone change and/or a text amendment. Mr. Marx said these options are always available to any person or group that feels that the zoning of a particular property is not appropriate, or that the Zoning Ordinance does not treat a particular use within that zone appropriately. He noted that pursuing a zone change request or a text amendment to the Zoning Ordinance can be a lengthy and involved undertaking; and it was possible that the current occupant of the property may not be interested in taking this route. He said the staff does not consider this to be a preferred alternative.
- Revoke the Conditional Use. Mr. Marx said this is the simplest and most direct way of addressing the issue at hand; however, choosing this option would not preclude the current occupant of the property from considering option #3 or #4 as an alternative. He noted four findings with this option (#5), which were briefly reviewed.

Mr. Marx then spoke about zoning suitable to the use/activity in question, in the event that option #5 is chosen. He said the Zoning Ordinance is very accommodating with regard to where Community Centers are allowed; and that a residential component to a community center is allowed if it is for a social purpose, as shown in the definition displayed on the overhead. He stated that a community center is allowed "by right" as a principal permitted use in the following 10 zones: Professional Office (P-1); Neighborhood Business (B-1); Downtown Business (B-2); Downtown Frame Business (B-2A); Office, Industry and Research park (P-2); Planned Shopping Center (B-6P); Community Center (CC); Mixed Use 1: Neighborhood Node (MU-1); Mixed Use 2: Neighborhood Corridor (MU-2); and Mixed Use 3: Community (MU-3). And, as a conditional use, subject to Board of Adjustment approval, a community center is allowed in the following four zones: Planned Neighborhood Residential (R-3); High Density Apartment (R-4); High Rise Apartment (R-5); and Light Industrial (I-1). Mr. Marx said the total acreage for the 10 zones noted is 5,173 acres and for the four zones noted, 13,169 acres. A color-coded map was shown for the purpose of illustration. He said, in general, there is a lot of land available for use as a community center; however, only a small percentage of the parcels shown

may accommodate the shelter's needs. He noted the recommendation of 6 months with respect to the relocation process.

(Chairman Stout cautioned someone in the audience about the constant interruptions during the staff's presentation.)

Chairman Stout commented that, considering the numerous parcels of available land, it would be overwhelming for a person to know where to start the search for a suitable site for the homeless shelter without assistance. He queried, if the occupants of the building are not in compliance and the Board deems that to be so, how they would be able to get the help they need in order to find an appropriate site within the given 6-month timeframe. In response, Mr. Marx said he hoped they wouldn't try to do this alone, but in partnership with local government; and that the Division of Planning is committed to stepping up its efforts to assist with this task.

In closing, Mr. Marx commented that this is a tough situation, and the only way he was able to get through this with any comfort level at all is to know that there is a better way to go about this; and that "butting heads" over zoning is not going to help anyone in the long term. He reiterated that the Division of Planning was ready to step up and do more, as the local government should do. However, he felt there needs to be some recognition on the part of other groups, organizations and churches that minister to the needs of the homeless that there are zoning laws they need to be compliant with; and that local government and those groups should be partners rather than adversaries. He went on to say, with respect to the Board's decision, that the focus should be on the long term, not the short term. He acknowledged that, in the short term, there may be some hardship if this facility has to relocate; but that would depend on the success of finding a more suitable site in the allotted 6-month timeframe. Mr. Marx stated that the staff was recommending option #5, noting the importance of the 6-month window, hopefully to work together in partnership.

Chairman Stout acknowledged that signed petitions had been submitted in opposition to the continued operation of the facility in question. He asked for a show of hands from those persons present in opposition, as well as those in support. The Chairman then asked those persons present in support of the revocation to come forward and speak first.

Opposition – Mr. Mark Spears, representing Mt. Olivet Baptist Church (1008 Delaware Ave.), was present. He said the church pastor could not be present due to a previous commitment. Mr. Spears spoke about what he has observed in the past year with respect to the increased activity related to the homeless shelter operation, which included: incidents of trespassing on neighboring properties as well as the church property; alcohol consumption in public; the use of profane language; non-residents (strangers) sleeping on the church buses; vandalism of the church vans; littering; and defecation on church property and in public. In closing, Mr. Spears said that this increased activity was not good for the children or the neighborhood.

Mr. B. W. Blanton, Jr. was present to speak on his and Mr. Fred Hale's behalf (for whom he has power of attorney). He commended the efforts of Ms. Ginny Ramsey in her mission to help people who are in need with the resources that were available to her. He also noted his support of the Salvation Army, Goodwill and other similar agencies. However, he believed that supporting a community should not go so far as to be a detriment at the risk of tearing the neighborhood apart. He said he remained committed to helping with the relocation of the homeless shelter to a better suited site and volunteering to be on the Mayor's task force. He felt that in order to find a suitable property for the facility, it would be necessary to work with local government and business leaders as well who may have vacant properties. He suggested that an appropriate site might be a vacant apartment complex with multiple buildings that would be able to accommodate classrooms, housing, a medical clinic, counseling, etc. He also noted his concern about the safety of the residents in the homeless shelter, considering the number of people staying there and his recollection of the devastating fire that occurred at the Beverly Hills Supper Club several years ago (due to noncompliance with the fire code). In closing, Mr. Blanton hoped that the Board would support the staff's findings and revoke the conditional use.

Ms. Carol Clemons, a Dallas Avenue resident, was present. She expressed concern about the safety of her grandchildren when they are allowed outside to play and what they have seen happening in the neighborhood. She spoke about the strangers (non-residents) in the area who are

constantly panhandling, loitering and scaring her grandchildren. She said she would prefer that the homeless shelter be moved elsewhere; and that it would not have sex offenders in the congregation.

Mr. Ed Clark, a Delaware Avenue resident for 25 years and president of the Delaware Area Neighborhood Association, was present. He told the Board that this is a new neighborhood association that was formed as the result of problems regarding the Community Inn at 824 Winchester Road. He asked, on behalf of his neighbors and himself, that the Board revoke the conditional use permit that was first issued to Inner City Ministries and later transferred to Emmanuel Apostolic Church/Catholic Action Center. He said the original permit that was issued in March 2010 was for a church, with no mention of a homeless shelter; and that the neighborhood residents were sent notice and no one objected. However, after a year, the permit was transferred to the current tenants. In April 2011, the homeless shelter began operating seven days a week, from 7:00 p.m. until 8:00 a.m., at which time its residents were turned out into the streets of the surrounding neighborhood. He said panhandling on the streets became a constant problem to the point where older residents were afraid to walk to McDonald's or Speedway for fear of confrontation with these homeless individuals; and parents were afraid of letting their children play in the yards. He said, as of yesterday, five registered sex offenders were using the homeless shelter as a permanent home address, which is prohibited by the zoning regulations.

Mr. Clark then spoke about the efforts of Ginny Ramsey, with the Catholic Action Center, to buy a house on Detroit Avenue in order to establish a residence for five sex offenders. He stated that a meeting with neighborhood residents was held, which included Ms. Ramsey and Sheriff Kathy Witt; and that the residents strongly objected to such a home in a neighborhood with 50 to 60 children. He said this proposal was withdrawn subsequent to the meeting due to public reaction; and that the safety of the elderly and children was paramount. He went on to say that, given the state of the economy, the homeless population was increasing every day and needed to be dealt with; and that City, State and Federal governments need to work together to find a solution to this growing problem that did not infringe on the rights of others. Mr. Clark reiterated the request to have the conditional use permit revoked and asked that this property not be used for any purpose that does not comply with B-4 zoning.

5<sup>th</sup> District Councilmember Bill Farmer, Jr. was present. He said there is a tangible need for homeless shelters and people who are homeless to be dealt with in our City, which the Mayor and the Council realize. He said the Mayor was establishing a new task force to deal with this issue. However, he said he endorsed the neighborhood's petition for the Board to make a finding related to the revocation of the conditional use permit as outlined in option #5. He said there is a fairness issue involved in what is fair for this viable neighborhood, which is adjacent to many amenities in Lexington and shares a real sense of community. He said many of the property owners have lost the use of their front porch, front yard and sidewalk because of the intense use of the subject property in relation to the use that was originally permitted. He encouraged the Board to take their time and make the right decision, knowing that the Council office as well as the LFUCG would be at the disposal of this entity, during the time allotted, to help them look for a suitable location that would accommodate those persons they are trying to help.

Supporter's Presentation – Mr. Ed Dove, attorney, was present. He felt that the Board should be provided with some background information, noting that the issue regarding the homeless shelter did not just pop up the way it has been presented, which was not entirely accurate. He said there had been discussions since January 2011 about opening this (building) as a shelter. In point, he made reference to an e-mail document indicating that Capt. Hickey, with the Fire Department, conducted a walk-through of the structure and found some safety concerns, a copy of which was sent to the building owner, as well as Building Inspection. He said this illustrated that Building Inspection knew there would be an expanded use of the property at 824 Winchester Road. Further, he made reference to a second e-mail document from Building Inspector Joseph Bryant to the Catholic Action Center in which he stated that "the news of a permanent homeless shelter reached our office today and gave us some reason to pause. We have already set up a meeting for Wed. to discuss this new ministry with Jesse and Ginny. If our office agrees after that meeting that the new ministry does not change the use of the church as far as building code or zoning application, then we can issue a permit for the new stairs. Mr. Dove stated that the permit for the new stairs was issued. He reiterated that as early as January, Building Inspection was aware that the building would be used as

a permanent homeless shelter; and there was never any response to say that this would not be an acceptable use, but rather the opposite when Building Inspection approved the permit for the stairs. (A copy of both documents referenced was submitted to the Board.)

With respect to the parking issue, Mr. Dove said the four parking spaces mentioned by Mr. Marx may have been lost, but arrangements had been made by the Catholic Action Center to secure parking (25 spaces available) across the street from the building, at Milner Electrical (817 Winchester Road). Therefore, he said, with respect to Condition #5, that the parking issue had been eliminated. A copy of the document was submitted to the Board.

Mr. Dove addressed Condition #1 with regard to what this facility was going to be used for. He referred to an e-mail document from Capt. Hickey, dated March 22, 2011, indicating his permission to have 75 beds downstairs and 40 upstairs. However, on March 28 and 29, Building Inspection visited the subject property and tried to say they were not aware that this would be used as a shelter or for serving meals. He said, obviously, the left hand doesn't know what the right hand is doing. He said between March 28 and 29 and the time notice of the intent to revoke the conditional use was sent out on April 20, there was no discussion between Building Inspection or Planning and Zoning with the building occupant concerning the use at 824 Winchester Road.

Mr. Dove stated that what this (issue) boils down to, as indicated by previous speakers (including Mr. Marx), is that we have an underserved population. He said Congress passed legislation in 1980 to assist the homeless; and it has been 30 years that this community has not adequately addressed the issue of the homeless. He further stated that this issue has been left to private individuals to address; and although the problem has not been eliminated, they have tried to make it a little bit easier for the homeless.

Chairman Stout inquired whether Mr. Dove was saying this is no longer a church, but rather a facility for the homeless. Mr. Dove responded no, but that part of this church's mission is to provide these services to an underserved population.

Continuing, Mr. Dove said that he thought everyone recognized the significance of this issue, which is the query of what is a church; and what is the mission of a church. He stated that the Emmanuel Apostolic Church has taken their ministry to the people who are homeless and underserved. He said since the beginning of our Constitution, there has been a separation of church and State; and that this is the question that is presented to the Board of Adjustment if the definition of a church, as supported by Mr. Marx and his staff, overrides the mission of the church. He went on to say that the legal issue is a big issue, but the social issue is bigger; and that the City isn't serving these people, but an opportunity is being provided to do that. He acknowledged that the Mayor wanted to establish a task force, but questioned when that was going to take place. He told the Board that it was going to take years before a decision on an affirmative program to deal with the homeless population is made; and that private citizens and private agencies are needed to continue serving who they can until that time. In closing, he asked the Board to deny the revocation and to look at the bigger picture -- that there are many more homeless out there who are not being served by this program.

Chairman Stout commented that he didn't think anyone, including the Board members, the LFUCG or the community, want to see people displaced; however, he felt that the church's intentions, with respect to this mission, should have been disclosed when they came to the Board several months ago, but they were not. Therefore, the Board was left in a position to approve something that was (mis)interpreted to be a traditional church. With respect to Mr. Dove's presentation, the Chairman asked whether he was saying that it was acceptable to violate the zoning regulations.

Mr. Dove responded that he didn't think there was an attempt to mislead the Board. He reiterated about the discussions and documents showing that in January, the City knew that the building was going to be used as a homeless shelter. Further, there was no discussion between Building Inspection, Planning and Zoning and the building occupant about getting the permit amended. He said the reality is whether this is an issue of a mission of a church versus the zoning regulations; and they were saying, with all due respect to the Board, that freedom of religion would take precedence over the zoning. Chairman Stout said he understood what Mr. Dove was saying, but that rationale just "does not wash."

For clarification, Mr. Glover asked whether a church was a conditional use in the B-4 zone. Mr. Dove indicated that it was. Mr. Glover then asked if an application was made for a church on the property and approval granted for a conditional use. Mr. Dove responded affirmatively. Mr. Glover said the conditional use was granted subject to the five conditions that must be complied with, because that is what the zoning law requires; and it is not free and open and unrestricted. Mr. Dove concurred that there were conditions. With respect to Condition #1, Mr. Glover asked if the church use was to be operated in accordance with the submitted application, as it relates to having Sunday morning services and Thursday morning services. Mr. Dove responded that he believed that is what the application indicated. Mr. Glover noted that there was nothing in the application about a homeless shelter or overnight accommodations. Mr. Dove responded no, but this all comes back to the mission of a church. He said what they think the church's mission is versus what the Board or the City thinks it is are two different definitions. Mr. Dove reiterated that everyone knew, including Building Inspection, that the intent was to have a homeless shelter on this site. Mr. Glover asked, if that was the intent and everyone knew, why it wasn't part of the conditional use application or an amendment to it. Mr. Dove responded that he was unable to answer the question and deferred the response to either Ms. Ramsey or Pastor McDonald. Mr. Glover made the point that neighborhood residents really had not been given proper notice that the mission of the church has expanded to include the homeless shelter and other services.

(The Chairman again warned an audience member about interrupting comments during the hearing.)

In response, Mr. Dove said, if that is the Board's position, they certainly were willing to amend their request; and if there is a public notice requirement, they will comply with that. However, he felt that the drastic action of a revocation should be the last resort, considering the five options. He said anything they could do to resolve this issue in lieu of the revocation, they would certainly do that.

Mr. Glover asked if Mr. Dove had reviewed option #5 of Mr. Marx's presentation, in which 6 months was given to relocate the homeless shelter with the assistance of the Division of Planning. Mr. Dove responded that he had read it, but felt that the time allotted was not sufficient to accomplish the task at hand.

Supporter - Elder James McDonald, pastor of the Emmanuel Apostolic Church, was present. He briefly spoke about the separation of church and State. He said, as a minister, his job is to help those who cannot help themselves; and that their main concern is the needy. He said the Catholic Action Center and the Emmanuel Apostolic Church partnered together to help those persons in need come out of the conditions they are in and change their lives.

Chairman Stout commended Rev. McDonald for what he does, but noted that the Board deals with the regulations. He asked if it would not be more beneficial to try to resolve this situation where the shelter is in an inappropriate zone and reach out to the LFUCG for assistance to relocate to another facility. Rev. McDonald reiterated that he is a minister and unfamiliar with the regulations; and that he would go along with whatever the Board decided. However, he told the Board that he would continue his work; and that if something could be worked out, that was fine.

Ms. Ginny Ramsey, 322 Ridgeway Road, was present and stated that she is the co-director of the Catholic Action Center and the Community Inn. She reiterated about working together in January 2011. In review, she said Rev. Jesse Morris was the pastor at Inner City Breakthrough Ministries when the conditional use was granted by the Board in June 2010. She said Rev. Morris came to the CAC office in December 2010 to request their assistance in order to have a homeless shelter at 824 Winchester Road, because of the work he had seen them do in partnership with the Central Christian Church shelter during the World Equestrian Games. She said he told her that he wanted a place where people could be fed downstairs and sheltered upstairs, which the owner of the building could attest to. She said the owner of the building was willing to take a chance on the Inner City Ministries to be allowed to open a church that believes in feeding and housing; and that the building owner never questioned whether what Rev. Morris was asking for was a church.

Ms. Ramsey noted having been in contact with the Planning office in February in order to discuss the issue and find a resolution, before their attorney had to get involved. She said religious land use was upheld for the Catholic Action Center in 2003 (noting that it took 2 years to accomplish); and they didn't want to have to do that again because it had already been recognized. In review, she said Mr.



Mays, the owner of the building, paid the application fee to enable Rev. Morris to go through the process; and that Rev. Morris was given 14 months by the building owner to address the outstanding items found by Code Enforcement that were noncompliant (e.g., paint building exterior; install new stairs; plumbing and electrical work, etc.) and to get the utilities turned on in order to operate the church. However, Rev. Morris was unable to continue paying the utilities in December 2010, which is when the CAC office was contacted. She assured the Board that they would not have invested \$90,000 in the building if they had not gone through all the steps legally. She made reference to an e-mail document dated January 2011, when the first walk-through of the building was conducted, as well as other e-mail documents and supporting information, including approval from the Fire Department. With respect to the issue that Building Inspection was not aware of their intent to operate the shelter, she said there had been newspaper and media coverage about it. Ms. Ramsey said they did want to have apartments upstairs in the building for veterans, which had been allowed for the past 15 years, but they were not allowed to do so. She said they found out that the windows would need to be changed if they wanted to have sleeping accommodations upstairs; however, they could not open the upstairs unless it was for meetings, one-on-one counseling, medical, etc. She reiterated that it was known that they would only be using the downstairs, referring to the 75 person capacity affirmed by the Fire Department.

Ms. Ramsey spoke about the Certificate of Occupancy issued to the Emmanuel Apostolic Church in March 2012 for the building, with the BOA case # and conditions referenced, which she thought indicated that the use was acceptable. She argued, with respect to Condition #1, that this is a church; and that off-site parking had been secured in accordance with Condition #5 and approved by Building Inspector Nancy Marinaro. She said they did everything they were told that needed to be done. With regard to notice of the revocation hearing, she said the letter was dated a week before the scheduled hearing, but they had received it only two days before that was supposed to happen. She went on to say that there is so much to be done to take care of homeless citizens; and that they had met with the neighbors on two occasions, some of whom supported the efforts of the center. She spoke about one letter from a neighbor in which they expressed how much better the situation is since there has been security on the property in the afternoon. She said they could not move in just six months because they had no money. In closing, she said she loved Lexington and didn't want it to become what it could in this case -- ridiculed by the rest of the country because the shelter use was closed down, which the City said they could do, in the midst of this economic time. She continued to argue that this is a church; however, she expressed being willing to abide by the Board's decision.

Mr. David Christiansen, director of the Central KY Housing and Homeless Initiative, was present. He said they work in conjunction with two or three dozen service providers in Lexington regarding the issue of persons who are marginally housed or homeless. He said he really appreciated the detailed presentation by Mr. Marx. However, he was concerned that if we get lost in the detail, it would be a big mess. He suggested rising above the detail and looking at the larger issue. He said if the revocation is issued and the Community Inn is shut down, it would be seen by the community and perhaps the nation as an attack on homeless individuals and homeless service providers. He said the mission of their organization is to work with anyone willing to work with them, including neighborhoods, shelters, etc., to try to find ways of collaborating to meet the needs of everyone in the community. He offered the services of his organization to come up with some way of collaboratively resolving these issues. Mr. Christianson recognized that the Board had to work within the regulations; but he felt the City needs to realize that if they are going to be perceived as really wanting to solve the problem, six months would not be enough time. He said it was difficult to get facilities serving homeless, poor and at-risk persons here, noting the allotted timeframe and expense. He recommended that, if the revocation is approved, the homeless shelter should not be shut down until such time as another facility is provided and the people living there are relocated to the new facility.

Pastor Ron Davis was present. He said he is pastor of a church at the corner of 7<sup>th</sup> and Shropshire Streets; and despite its location, there had been no damage to the church property in over 20 years. He said their church goes to the Community Inn every Tuesday; and that great work is being done there. He briefly spoke about some of the services his church provides to those persons in need of help.

Ms. Tayna Fogle was present to speak about the dire need for help to homeless individuals. She appealed to the Board's heart and Christianity to find a way to make the situation involving the homeless shelter work.

Mr. Corey Dunn, 3185 Pimlico Parkway, a volunteer with the Catholic Action Center, was present. He said he believed that if homeless people need help, this church is doing exactly as the scripture he quoted says. Mr. Dunn said he was passionate about this issue because he was homeless at one time. He felt that no one wanted to accept the fact that homeless persons need help and a place to receive that help.

Pastor Everett Hobson, of the Quinn Chapel African Episcopal Church, 744 Charles Avenue, was present. He said the church has been in existence for 140 years in that community; and that its mandate is to reach and love everyone. He said he understood that the Board has to abide by the regulations; however, he felt that if there is a need to close down the facility, the Board must be sure that something is done before they close the doors. He said the community has to "man up" because the problem with homelessness is not going away; and that churches also have a responsibility. He felt that it was essential to handle this injustice issue in our community. He told the Board that, not only would they be held accountable for what they do in relationship to this City, but they also would be held accountable to God.

Mr. David Rhodes, a resident of Richmond, KY, was present. He spoke about his appreciation of the community of Lexington with respect to the various organizations that assist people with getting jobs, such as the Urban League; and that he has recommended to his friends that they come here. He said he hoped that the Board will do the right thing.

Pastor Ann Freeman, 677 Bishop Drive, was present. She reminded those persons in the audience, as well as the Board, that prayer changes things, people and situations; and that this is a delicate situation that needs much prayer. She spoke about the food program offered at her church on Thursday and other churches in the City that do likewise. She said the facility, which she visited last week, provides shelter and is nice and clean. She said she knew this would be a tough decision for the Board to make; but she asked the Board, the rules and regulations of the City notwithstanding, to look at the church and what has been done in obedience to the word of God.

Mr. Rick Foster and Mr. Chief, both of whom have been homeless, were present to express their support for the continued operation of the Community Inn.

Mr. Kent Mays, the owner of the building at 824 Winchester Road, was present. He stated that he appeared before the Board when the original conditional use permit was granted for a church, but the problem now is that it is too successful. He said it was alright when there were no more than 30 people, but the Board has to do something with it now because of its success. He noted that it is exactly what was envisioned when it was applied for. He wished the Board good luck on their decision.

Mr. Charles Boucher was present to express his support for what the Community Inn is doing. He asked the Board to keep in mind, with respect to option #5, that it will be winter in 6 months, which is the worse time to be putting out the homeless. He concurred with the previous speaker's comment about having a place for the homeless to go before shutting the doors to the Community Inn.

Ms. Lena Cornett, a Dallas Avenue resident, was present to express concern about the safety of her grandchildren, particularly since she suspected that sex offenders are allowed to stay at the shelter. She supported the option that would give the building occupants six months to relocate elsewhere.

Ms. Marcia Garland was present. She stated that the economy is about to crash, and some of the people present are going to be out on the streets. She asked the Board to think about that.

Ms. Rebecca Blair, a Detroit Avenue resident, was present to express concern about her personal safety, noting that she wasn't the only one.

Ms. Diane Cahill, a volunteer at the Community Inn, 534 Grantchester Street, was present to express her strong support for this facility.

(Chairman Stout called a recess at 3:38 p.m. in order to confer with counsel and staff. The hearing was reconvened at 3:47 p.m.)

Chairman Stout said the Board had listened to several people, as well as legal representation for the Community Inn; and if there were no further comments, he would ask for the staff's rebuttal after which the Board would make their decision.

Staff's Rebuttal – Mr. Marx stated, with respect to understanding the current occupant's judgment that they were led to believe the operation of the homeless shelter was acceptable, that there was some confusion relating to code issues versus zoning issues. He said code issues basically deal with making sure the building is safe for habitation. Technically, in some cases, the exact type of habitation determines what has to be done; and in other cases, there might be a benefit, regardless of the type of habitation, to making a certain improvement. He explained that when a Fire Department official determines the capacity (occupant load) of a building or when someone who understands the building code determines that an exterior stairway needs to be improved or made functional and the windows on the second floor need to be replaced to allow safe egress in case of an emergency, those are totally separate things from the zoning question. He said in March, Building Inspection issued a Certificate of Occupancy to allow the building occupant to make an improvement to the second floor, knowing it could not be used as an overnight shelter; but also, that the improvement would be a benefit to the building's safety (regardless of how the second floor is occupied). The C O was issued with the understanding that improvements could be made to the second floor windows, but use of the second floor was restricted to classroom and office space. He said Ms. Ramsey showed the C O she received in the mail as evidence that it was acceptable to occupy the building for an overnight shelter; however, she failed to read the (imposed) condition that clearly said occupancy only for classes and office space. He said it was important to clearly understand the difference between code issues and zoning issues. Mr. Marx stated that Nancy Marinaro, with Building Inspection, would provide more detail and some history relevant to the timeframe of when they really did know there was a zoning issue with regard to the overnight shelter.

With regard to the available options, Mr. Marx stated that Mr. Dove indicated a willingness to go back to the Board and amend the conditional use, which is their choice. However, he emphasized that the Board could proceed with option #5 and it would not preclude the building occupant from coming back to the Board with a new conditional use application indicating their intent perhaps for a shelter as an accessory use; and that this would be a really tough challenge for them to show that, but they could apply for this within the 6-month window. He said the application for a conditional use, as compared to a zone change, is much quicker and is generally about a month-and-a-half process depending on the timing of the submittal.

Mr. Marx asked Ms. Nancy Marinaro, Division of Building Inspection, because of her involvement in this, at what point she thought it was clearly communicated to the Catholic Action Center/Emmanuel Apostolic Church that there was a zoning issue with regard to the overnight shelter.

Ms. Marinaro stated that the Building Inspection office was made aware of the opening of the homeless shelter by watching the local news, after which they did meet with Pastor Morris and Ginny Ramsey, along with the Division Director. She said they were asked at that time if the second floor of the building could be used to house homeless veterans or to expand the second floor and their response to them was that that would not be possible. She said they were authorized as a church; and Building Inspection understood that they did some ministry to help feed and house the homeless, as do many churches, which seemed normal to them. She said Building Inspection received calls from different organizations and the Fire Prevention Bureau regarding their request to be able to occupy the second floor as a homeless shelter, and the response was no.

Ms. Marinaro said the Certificates of Occupancy that have been issued were all for a church, noting that a homeless shelter is not an assembly use, but rather a residential use. She said none of the Certificates of Occupancy are for a residential use, which they have made clear; and that the last time they spoke with Ms. Ramsey was in February when she asked about the replacement of some of the windows, which she was told was fine. She said they wanted to make these egress windows and were told that it was not a problem whether or not they met egress, but it did matter what the entire building would be used for. She said every church has an accessory use, but Building

Inspection was looking at whether the entire building would be used for one use, in which case it should be specified what that use is. She said Ms. Ramsey was told that if there were any changes made to the use of the second floor, then she would have to have another building permit application and Building Inspection would review the proposal (to be able to house people on the second floor).

Since there were no further questions or comments, the Chairman asked for a motion.

Action – A motion was made by Mr. Glover to revoke the conditional use of the Inner City Breakthrough Ministries C-2010-20 for the failure to comply with the conditions imposed when the applicant was approved as a church in March 2010 in a Wholesale and Warehouse Business (B-4) zone on property located at 824 Winchester Road for the reasons listed by Mr. Marx in the supplemental staff report on page 4.

Prior to the motion being seconded, Mr. Glover stated that the Board of Adjustment could not ignore the regulations and requirements of the zoning laws; and they were not deciding, for example, whether or not this church should exist, but where. He said the zoning laws of the Commonwealth and the requirements on the Board of Adjustment allow and require them to make tough decisions just like this. He said they had heard a lot of testimony today, but it was also the responsibility of entities like this to live in the world, and particularly, to live in this community. He said this organization has a responsibility to obey the law and to obey the zoning laws, and they cannot just say they are going to leave it up to God. He said while they, as an organization, cannot ignore the laws of the community, the Board cannot ignore the laws either, which is the basis of his motion.

In response to the Chairman, the pending motion was seconded by Mr. Griggs. However, he wanted to have clarified the portion of the motion that allows the building occupants to have a certain amount of time to resolve the problem. Mr. Glover responded that his motion was based on option #5 of the supplemental report, which includes the recommendation for allowing a 6-month period for relocation.

Prior to the vote, Chairman Stout commented that he had been involved with the Board for 17 or 18 years; and that this case was very touchy. He said the Board, as a volunteer body, is asked to serve this community in a fashion relative to what the regulations say and how they are stipulated. He said some cases that the Board feels very close to, from the standpoint of sentiment, they have to make decisions on that sometimes don't sit well with them; but they have to do it because if they set a precedent and then go against it, they would find themselves, as a body, being useless (ineffective). He said while he has sympathy for what has happened here, he hoped the message to this City and to our City leaders is that this issue has to be addressed somehow; and it has to be addressed before snowfall and people are displaced with no place to go. He further stated that it is not the Board's responsibility to do any mandating in this particular area; but it is the Board's responsibility to make people aware that where they are is very uncomfortable. He said they are making a decision based on the fact that when the conditional use was approved, it was done without the Board having all the information (facts) relevant to the request. He said we, as people, have to abide by the rules and regulations; and while he had some sorrow about what the Board was doing, he hoped they were sending a message to the City that things have to change for those folks who have no place to go.

At this point, the Chairman called for the vote. The pending motion to revoke the conditional use of the Inner City Breakthrough Ministries carried unanimously (Stumbo, Moore absent).

Chairman Stout thanked everyone for their time.

- IV. **BOARD ITEMS** - The Chairman announced that any item a Board member wished to present would be heard at this time.
- A. **Change to the Official Meeting & Filing Schedule for 2012** – Prior to the revocation hearing on the aforementioned item, the Chairman asked the Board to consider a revision to the meeting & filing schedule, in order to reschedule the June 29, 2012 meeting. The staff had prepared draft changes to the Official 2012 Meeting & Filing Schedule for that purpose.

Action – A motion was made by Mr. Griggs, seconded by Ms. White and carried unanimously (Stumbo, Moore, Glover absent) to reschedule the June 29, 2012 meeting date to July 20, 2012.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There were none.
- VI. **NEXT MEETING DATE** - The Chairman announced the approved date of July 20<sup>th</sup> for the next Board of Adjustment meeting, since the June 29, 2012 meeting could not be held due to the lack of a quorum.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 4:03 p.m.

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Kathryn Moore, Vice-Chair

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James Griggs, Secretary